



## CHESTERFIELD COUNTY ADMINISTRATIVE POLICIES AND PROCEDURES

**Department:** Human Resource Management  
**Subject:** Fair Labor Standards Act Compliance

**Policy Number:** 6-17  
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### I. INTRODUCTION

This administrative procedure establishes policies and procedures to ensure compliance with the Fair Labor Standards Act (FLSA). Further, this procedure defines county policy regarding employees exempt from or not covered by the FLSA.

### II. DEFINITIONS

- A. **Exempt Employee (E)** – An employee who is exempt from guidelines and regulations established by the FLSA. To be considered exempt, an employee must meet one of the tests specified in Section III.
- B. **Nonexempt Employee (N)** – An employee who is subject to guidelines and regulations established by the FLSA.
- C. **Non-covered Employee (NC)** – An employee not covered by the FLSA because of falling within one of the following groups:
  - 1. Elected officials and their personal staffs
  - 2. Policy making appointees
  - 3. Legal advisors
  - 4. Legislative employees
  - 5. Volunteers
  - 6. Independent contractors
  - 7. Prisoners
  - 8. Certain trainees
- D. **Work Period** – The standard county workweek begins on Saturday at 12:01 a.m. and ends Friday at 12:00 a.m. A list is maintained in the Department of Human Resource Management of all departments or groups of employees whose compensation is calculated on a different workweek. Department management may arrange employee work hours within the standard workweek as deemed necessary to meet the business needs of the department.

### III. EXEMPT EMPLOYEES

To be considered exempt from provisions of the FLSA, one of the following tests must be met:

- A. **Executive** – An executive employee must meet all of the following requirements to be exempt from the FLSA:
  - 1. The employee's primary duty is managing the county, department, office or division
  - 2. The employee must customarily and regularly direct the work of at least two or more other employees
  - 3. The employee must have the authority to hire or fire, or recommend hiring and firing; or whose recommendations on these and other actions affecting employees is given substantial weight
  - 4. The employee must customarily and regularly exercise discretionary powers

5. The employee must devote no more than 20 percent of his or her hours worked in a workweek to activities not directly and closely related to the managerial duties
  6. The employee must be paid at least \$155 a week. (An executive employee paid at least \$250 a week on a salary basis is exempt if the employee regularly directs the work of at least two or more other employees and the employee's primary duty is management of a department, office, or division.)
- B. **Administrative** – An administrative employee must meet all of the following requirements to be exempt from the FLSA:
1. The employee's primary duty must be the performance of office or non-manual work directly related to the management policies or general business operations of the county
  2. The employee must customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures, and must have the authority to make important decisions
  3. The employee must:
    - a. Regularly assist a bona fide executive or administrative employee
    - b. Perform work under only general supervision along specialized or technical lines requiring special training experience or knowledge
    - c. Execute special assignments under only general supervision
  4. The employee must not spend more than 20 percent of work time on activities that are not directly and closely related to the administrative duties discussed above
  5. The employee must be paid not less than \$155 a week
  6. An administrative employee who is paid at least \$250 a week will be exempt if:
    - a. The employee's primary duty consists of responsible office or non-manual work directly related to the management policies or general business operations of the county or the county's customers
    - b. Such primary duty includes work requiring the exercise of discretion and independent judgment
- C. **Professional** – A professional employee must meet all of the following requirements to be exempt from the FLSA:
1. The employee's primary duty must be either:
    - a. Work requiring advanced learning, customarily obtained by a prolonged course of specialized instruction and study as distinguished from general academic education, apprenticeships, or routine training
    - b. Work that is original and creative in a recognized field, the result of which depends primarily on the employee's invention, imagination, or talent
  2. The employee must consistently exercise discretion and judgment
  3. The employee must do work that is predominantly intellectual and varied, as distinguished from routine mental, manual, mechanical, or physical duties
  4. The employee must not spend more than 20 percent of time worked in the workweek on activities not essentially a part of and necessarily incident to the professional duties
  5. The employee must be paid not less than \$170 a week

#### IV. COMPENSATORY TIME

- A. **Nonexempt Employees** – Compensatory time is earned for the number of hours worked in excess of the employee's standard 7-day/40-hour workweek. Compensatory time is earned at the rate of one and one half-hour for each hour worked in excess of 40 hours. Accrued

compensatory time must not exceed 50 hours. If compensatory time exceeds 50 hours, the department must take the appropriate payroll action for the employee to receive pay for the accrued compensatory time over 50 hours. All accrued compensatory time must be paid out at termination at the employee's current rate of pay.

1. **Example 1** – Employee X works a regular 40-hour workweek with regular hours from 8:30 a.m.—5:00 p.m. On Tuesday, employee X works from 8:30 a.m.—7:00 p.m. On Friday, employee X's supervisor ends the employee's workday at 3:00 p.m. For the week, the employee has worked 40 hours and has accrued no compensatory time.
2. **Example 2** – Employee X works a regular 40-hour workweek with regular work hours from 8:30 a.m. to 5:00 p.m. On Tuesday, employee X works from 8:30 a.m.—7:00 p.m. Employee X works a full day for the balance of the week. The two hours worked in excess of the employee's regular schedule will merit three hours of compensatory time (i.e.,  $1.5 \times 2$ ).

Sick time may not be used to earn compensatory time at the one-and-one half times the hours worked in excess of the employee's regular work schedule.

3. **Example 1** – Employee X works a regular 40-hour workweek with regular work hours from 8:30a.m.—5:00 p.m. On Tuesday, employee X works from 8:30 a.m.—7:00 p.m. On Friday, employee X misses the entire day due to illness and uses eight hours of sick leave. At the end of the workweek, the two hours worked in excess of the employee's regular schedule will merit two hours of compensatory time.
4. **Example 2** – Employee X works a regular 40-hour workweek with regular work hours from 8:30 a.m. to 5:00 p.m. On Monday, employee X misses the entire day due to illness and uses eight hours of sick leave. Employee X works from 8:30 a.m.—7:00 p.m. for the next three days and a regular (i.e., 8 hours) day on Friday. At the end of the workweek, the six hours worked in excess of the employee's regular schedule will merit six hours of compensatory time.

- B. **Exempt Employees** – At the discretion of the department director/office administrator, compensatory time may be granted on an hour for hour basis and only in one-hour increments. Portions of hours may not be accumulated. Exempt employees employed in positions ineligible to utilize the employee grievance procedure (Administrative Procedure 6-9) are also ineligible for compensatory time. Accumulated compensatory time may not exceed 15 workdays (120 hours) and will not be paid at termination of employment. Exempt employees are ineligible for overtime pay at both straight time and time and one-half.

## V. DEFINITION OF HOURS WORKED

All time during which a nonexempt employee is required or permitted to be on duty or at the prescribed work place, except for meals, is considered as time worked.

- A. **Breaks** – County authorized rest periods of 15 minutes are counted as time worked.
- B. **Meals** – A bona fide meal period is a span of at least 30 consecutive minutes during which a nonexempt employee is completely relieved of duty and free to use the time for his/her own purposes. It is not counted as hours worked. Any "meal period" of less than 30 consecutive minutes shall be included as time worked.
- C. **On Call Time** – Payment for on call time depends on the employee's freedom while on call. A nonexempt employee who is not required to remain on the employer's premises and is free to engage in his or her own pursuits, subject only to the understanding that the employee leave word at his or her home or with the employer is not accruing time toward hours worked while "on call." Similarly, time spent carrying a pager is not considered to be time worked.
- D. **Training** – When an employee attends training after normally scheduled hours, on his/her own initiative, the time is not compensable.

## E. Travel

1. **Home to Work** – A nonexempt employee who regularly travels from home before the regular work day and returns home at the end of the work day is engaged in ordinary home to work travel which is a normal incident of employment and is not included in compensable hours. This is true if the employee works at a fixed location or at different locations.
2. **Home to Work on Assignment Outside of the County** – When an employee who regularly works inside the county is given an assignment outside the county, travel time must be included as compensable time. The usual time required to and from work will be deducted when determining the amount of compensable time.
3. **Overnight Travel** – Travel by an employee who leaves the Richmond metropolitan area on county business overnight is counted as hours worked if such time is during the normally scheduled work hours. Travel time outside of normal work hours is not considered as hours worked. Overnight travel is counted as hours worked non-scheduled workdays during regularly scheduled work hours. Regular meal time is not counted.  
**Example** – An employee who has a work schedule of Monday—Friday, 8:30 a.m.—5:00 p.m. leaves for Baltimore, Maryland, on Sunday afternoon at 3:00 p.m. and arrives in Baltimore at 6:30 p.m. The hours between 3:00 p.m. and 5:00 p.m. are counted as hours worked. The time between 5:00 p.m. and 6:30 p.m. is not counted as work time.
4. **Waiting Time** – To determine if waiting time is compensable requires close evaluation of all facts. HRM should be consulted if questions arise on the compensation of waiting time.

## VI. OVERTIME PAYMENT CALCULATION

- A. A nonexempt employee whose **regular workweek is 40 hours** must be paid overtime, in addition to salary, for the weeks in which he works more than 40 hours. Overtime is paid at the rate of one and one-half times the regular rate of pay. The regular rate is calculated by dividing base salary by 40 hours.  
**Example** – Employee X works 40 hours a week at a salary of \$400. One week he works 44 hours. The regular rate is \$10.00 per hour (\$400 divided by 40). Employee X is entitled to overtime pay of \$60 (\$15.00 x 4). Total pay for the week is \$460.00.
- B. A nonexempt employee whose **regular workweek is over 40 hours** and whose salary covers all straight-time pay due for that number of hours, must be paid salary plus an additional half-time for all hours over the FLSA workweek.  
**Example** – Employee X regularly works 50 hours a week at a salary of \$500. His regular rate is \$10.00 per hour (\$500 divided by 50). Employee X is entitled to overtime pay of \$50.00 for the additional 10 hours worked (\$5.00 x 10). His total pay for the week is \$550.00.
- C. Nonexempt employees whose **workweek is irregular** (the hours fluctuate from week to week) and are paid a fixed salary with the understanding it is to cover all straight-time earnings for the week will be paid overtime for all hours over 40 based upon one-half the regular rate for the workweek times the number of hours over 40. Since the same fixed salary is divided by a different number of hours each week, regular and overtime pay will vary from week to week.  
**Example** – Employee X receives a fixed salary of \$450 for a fluctuating workweek. One week he works 45 hours; his/her regular rate for that week is \$10 (\$450 divided by 45 hours). The five overtime hours must be paid at an additional half-time rate of \$5.00 per hour (\$10.00 x 0.5), or \$25.00. Total weekly pay is \$475.00. The next week the employee works 50 hours. For that week his/her regular rate is \$9.00 (\$450 divided by 50 hours). The 10 overtime hours

must be paid at an additional half-time rate of \$4.50 per hour (\$9.00 x 0.5), or \$45.00. Total pay for that week is \$495.00.

- D. Nonexempt employees may not “volunteer” for extra work, i.e., report to work prior to the beginning of the work day, work through their lunch period, or remain after the official close of business of the work day. Department directors/office administrators shall be charged with the responsibility of enforcing this policy. Mere declaration of policy prohibiting an employee from “volunteering” time does not relieve the county of the liability to pay overtime for the extra work.
- E. Nonexempt employees are prohibited from holding two county positions, either full or part-time, unless approved by HRM and the department directors/office administrators of both departments. Nonexempt employees may be utilized for special events, such as the County Fair or working at a polling place on Election Day, if written approval is received in advance from the Department of Human Resource Management. Exempt employees may be permitted to hold two county positions, at the discretion of the department directors/office administrators, provided work performance does not suffer. Employees who work in a seasonal recreational program that does not operate for more than seven months during a calendar year are exempt from overtime provisions and may hold two such positions within their department.
- F. Sick leave, part time leave, compensatory time and leave granted for recognition purposes will not be considered as hours worked for the purpose of computing overtime pay or the accrual of compensatory time. Holidays, annual leave, floating holidays, bereavement leave, military leave and civil leave are considered hours worked for the purpose of computing overtime pay.
- G. Notwithstanding the provisions of paragraph F, sick leave will be considered as hours worked for the purposes of computing regularly scheduled overtime pay for employees whose regular work schedule includes work hours in excess of the FLSA overtime threshold for the work cycle and whose work cycle exceeds seven days.
- H. Departments should monitor the amount of overtime to insure the safety of the employee and others.

## **VII. RECORDKEEPING FOR NONEXEMPT EMPLOYEES**

Each department must keep daily and weekly time and attendance records of hours worked, sick leave, annual leave, holidays, leave without pay, other categories of leave, and overtime hours for each week. Each of these time and attendance records must be signed in ink by the supervisor and the employee. Departments are required to keep these records for five years.

## **VIII. DISCIPLINARY SUSPENSIONS OF EXEMPT EMPLOYEES**

When it is necessary to suspend an exempt employee for reasons other than an infraction of a safety rule of major significance, the suspension shall not be less than a full workweek, i.e., 40 hours. Suspensions of more than a workweek will be in multiples of full workweeks, e.g., three workweeks (120 hours) suspension, five workweeks (200 hours) suspension. An exempt employee may not serve such a suspension period in less than whole workweek segments, since working a portion of the week could affect the employee’s exemption status under the FLSA. If an exempt employee works any hours during a week, they are paid for that full week including any holiday that occurs during that week.

The effective date of a suspension for an exempt employee will be the first day of the employee’s normal workweek.

Suspension of an exempt employee for an infraction of a safety rule of major significance may be applied for less than a full workweek. Safety rules of major significance are defined as provisions intended to prevent serious danger to the workplace or to others, such as prohibiting smoking in explosive areas.

**IX. EXEMPT EMPLOYEE WHO HAS NO LEAVE BALANCE**

An exempt employee with no leave balance may be docked in full day increments only.